

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TENNESSEE CLEAN WATER NETWORK,
and TENNESSEE SCENIC RIVERS
ASSOCIATION,
Plaintiffs,

v.

TENNESSEE VALLEY AUTHORITY,
Defendant.

No. 3:15-cv-00424
Chief Judge Crenshaw
Magistrate Judge Holmes

**TVA’S SECOND BIENNIAL STATUS UPDATE ON
COMPLIANCE WITH THE COURT’S AUGUST 4, 2017 ORDER**

On August 4, 2017, this Court issued an order enjoining TVA to “wholly excavate the ash waste disposal areas” at the Gallatin Fossil Plant (“Gallatin”) Ash Pond Complex and Non-Registered Site (“NRS”), to “relocate the excavated coal ash waste to a lined impoundment with no significant risk of discharge into the waters of the United States,” and to file, “[w]ithin thirty days of the entry of this Order, . . . an itemized proposed timetable for compliance, including a proposed schedule for filing periodic updates with the Court.” (Order, Doc. 259 at PageID ## 10543-44.)¹

On September 5, 2017, TVA filed its Proposed Timetable for Compliance with the Court’s August 4, 2017 Order. (Doc. 268-1.) As more fully described in TVA’s Proposed

¹ On September 24, 2018, the United States Court of Appeals for the Sixth Circuit reversed “the judgment of the district court imposing CWA liability on TVA.” *Tenn. Clean Water Network v. TVA*, ___ F.3d ___, No. 17-6155, 2018 WL 4559103, at *9 (6th Cir. Sept. 24, 2018). Nevertheless, TVA submits this status report to inform the court of the work TVA has completed at Gallatin since the filing of the previous status report on March 30, 2018. (See TVA’s First Biennial Status Update on Compliance with the Court’s August 4, 2017 Order, Doc. 308.) TVA further informs the Court that it will continue to comply with its environmental obligations, including the federal CCR Rule, and that it will continue its work under the Environmental Investigation Plan in coordination with the Tennessee Department of Environment and Conservation (“TDEC”).

Timetable for Compliance (Doc. 268-1), closure and restoration at Gallatin necessarily entails a detailed permitting and construction process due to the confluence of regulatory requirements and current plant operations. A summary of the work TVA has performed over the last six months is set forth below.

1. New Landfill for Disposal of CCR

A potential feasible option which TVA is evaluating and which would be contingent upon the outcome of a National Environmental Policy Act (“NEPA”) review would be to construct a new lined landfill on the Gallatin reservation property. (*See id.* PageID ## 10879-80.) To make such a feasibility determination, it would be necessary for TVA to (1) identify a location for this new landfill; (2) obtain a permit for it; (3) construct it; (4) operate it; and (5) prepare a closure plan and implement it at the appropriate time.

In addition to NEPA, two other environmental laws are triggered by TVA’s evaluation of the potential feasibility of this option: the National Historic Preservation Act and the Endangered Species Act. To comply with these statutory requirements, TVA will complete an Environmental Impact Statement (“EIS”) to evaluate disposal options for the CCR materials. The EIS process began at the end of March 2018 and is ongoing. The EIS is expected to take approximately two years to complete. Over the past several months, TVA staff has further refined the details and scope of the alternatives to be studied in the EIS. In addition, TVA resource specialists have completed a preliminary screening of environmental impacts to help inform the determination of what more detailed technical surveys are necessary to support the study. Next steps include publication in the next few months of a Notice of Intent to conduct an EIS, which informs the public of the upcoming environmental analysis and describes how the public can become involved in the EIS preparation.

The process for determining whether the construction of a new lined landfill on the Gallatin reservation property is a potential feasible option is based on several investigative endeavors, some of which are ongoing. In November 2017, TVA commenced a landfill siting study to evaluate potential on-site and off-site options for disposal of the CCR excavated from the Ash Pond Complex and the NRS. The study was completed on March 2, 2018. Based on the preferred options in the landfill siting study, TVA is currently conducting a hydrogeologic investigation of the potential new landfill site(s). This investigation will support landfill design, and it is also a necessary component of the application materials that would have to be submitted to obtain a solid waste permit from TDEC. TVA submitted Part I of the solid waste permit application to TDEC in June 2018. Part II of the permit application will include the results of the hydrogeologic investigation and the engineering design of the proposed landfill. TVA initiated the hydrogeologic investigation process in March 2018 by staking out proposed boring locations, identifying roadways needed to access drilling locations, and completing NEPA reviews and permitting necessary for road construction. Those preliminary activities are now complete, and TVA held a kickoff meeting to begin drilling for the hydrogeologic investigation on July 10, 2018. Drilling activities for the required hydrogeologic investigation are ongoing.

2. Bottom Ash Dewatering

To discontinue bottom ash sluicing to the Ash Pond Complex, TVA is constructing a new permanent bottom ash dewatering facility. Construction began in December 2017 and is ongoing.

Because the CCR Rule may require TVA to cease use of the Bottom Ash Pond, Ash Pond A, Middle Pond A, and Ash Pond E in the spring of 2019 before the permanent bottom ash dewatering facility is complete, TVA is planning to construct a new temporary bottom ash

dewatering facility. TVA submitted an engineering report and preliminary engineering drawings to TDEC, and on June 12, 2018, TDEC informed TVA it had no objection to the project proceeding forward. Construction began in August 2018 and is ongoing.

To divert flows away from the existing ash ponds, the temporary system will discharge to the Cumberland River through a proposed new Outfall 010, which was permitted by TDEC in a renewed National Pollutant Discharge Elimination System (“NPDES”) permit that became effective on June 1, 2018. Construction of the new outfall also requires a TDEC General Aquatic Resources Alteration Permit (“ARAP”) and a U.S. Army Corps of Engineers (“USACE”) Section 404 Permit. Site visits were completed in August 2018 to review the location of the new outfall with the regulatory agencies. USACE issued the Section 404 permit for the new outfall on September 13, 2018. TDEC’s review of TVA’s ARAP application is ongoing.

3. Wastewater Processing Ponds

Ultimately, wastewater processing ponds will be necessary to treat plant wastewater currently managed by the Ash Pond Complex. TVA is in the process of completing the required NEPA review associated with construction of these ponds. TVA has begun designing these ponds and preparing to fulfill the related regulatory requirements, which include a TDEC review to ensure compliance with specified design criteria. It is anticipated that construction of the wastewater processing ponds will begin after TVA completes its environmental review and fulfills the regulatory requirements.

4. Clay Borrow Site

The clay borrow site provides the soil necessary to construct the wastewater process pond dike system and the clay liner system for any new onsite landfill. The borrow site will also support construction of the proposed landfill’s interim cover and closure cap system. TVA

released a draft Environmental Assessment (“EA”) concerning the borrow site for public comment on July 9, 2018 and accepted comments through August 7, 2018. TVA is currently responding to public comments and revising the EA accordingly. TVA completed design of the borrow site on August 17, 2018. An ARAP and a USACE 404 Permit are required prior to construction of the borrow site. Applications for these permits were submitted on August 13, 2018, and are currently being reviewed by the regulatory agencies. An NPDES General Construction Stormwater Permit has been obtained for the initial phase of borrow site construction. Construction on the first phase of the borrow site will begin in late 2018 or early 2019 once the necessary permits are received.

5. Dredging the Stilling Ponds

The stilling ponds are final polishing ponds that receive plant wastewater, including de minimis amounts of CCR that remain in the wastewater after it cycles through the ash ponds. TVA currently plans to remove any CCR remaining in the stilling ponds by sediment dredging after completion of the EIS and subject to regulator approval. TVA continues to communicate with TDEC about future plans for the stilling ponds.

Respectfully submitted,

s/James S. Chase

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CERTIFICATE OF SERVICE

I hereby certify that, on September 28, 2018, TVA's Second Biannual Status Update on Compliance with the Court's August 4, 2017 Order was filed electronically through the Court's ECF system. Notice of this filing will be sent by operation of the Court's ECF system to counsel for all parties as indicated below. Parties may access this filing through the Court's ECF system.

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